

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WENFORD FLETCHER,

Plaintiff,

v.

DALLAS POLICE DEPARTMENT, et al.,

Defendants.

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CIVIL ACTION NO. 3:05-CV-2138-B
ECF

MEMORANDUM ORDER

Before the Court is Defendant Dallas Police Department's Motion for Dismissal Under Fed. R. Civ. P. 12(b)(6) (doc. 19), filed January 6, 2006. Because the Dallas Police Department is not an entity with the capacity to be sued, the Court **GRANTS** DPD's Motion.

I. BACKGROUND

Plaintiff Wenford Fletcher ("Fletcher"), proceeding *pro se*, filed this civil rights action against Defendants the Dallas Police Department ("DPD"), Tom Jacob Schwend, and Daniel Warren Foster on November 1, 2005. Fletcher claims he was subjected to excessive force when he was arrested on May 19, 2005. DPD filed the instant motion on January 6, 2006, asserting that it was not a proper party under 42 U.S.C. § 1983. Fletcher filed no response, and the Court now turns to its decision.

II. ANALYSIS

Rule 17 of the Federal Rules of Civil Procedure states that the capacity of an entity to be sued shall be determined by the law of the state in which the district court is seated. Thus, this Court looks to Texas law to determine whether DPD possesses the capacity to be sued. Because the City


of Dallas is a home rule municipality, Texas law grants the City the authority to organize a police force. TEX. LOC. GOV'T CODE ANN. § 341.003 (Vernon 1999 & Supp. 2004). The City's Charter states that the City may sue and be sued, but does not grant the same right to DPD. Dallas City Charter Ch. II § 1(2). Because the City Charter does not give DPD the power to sue or be sued, Fletcher may not bring suit against DPD, since it has no legal existence. *Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991); *Maxwell v. Henry*, 815 F. Supp. 213, 215 (S.D. Tex. 1993). Therefore, the Court **GRANTS** DPD's Motion for Dismissal.

III. CONCLUSION

Because the Dallas Police Department lacks the capacity to be sued, the Court **GRANTS** DPD's Motion for Dismissal and **DISMISSES** Fletcher's claims against DPD with prejudice.

SO ORDERED.

SIGNED April 10th, 2006



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE